



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Ms. Katheryn Emery, Program Manager
Clean Water State Revolving Fund
Division of Water and Waste Management
West Virginia Department of Environmental Protection
601 57th Street
Charleston, West Virginia 25304

JUL 09 2015

RE: FY 2014 CWSRF Program Evaluation Report

Dear Ms. Emery:

This Program Evaluation Report (PER) is the U.S. Environmental Protection Agency's (EPA) evaluation of the West Virginia Department of Environmental Protection's (WV DEP's) Clean Water State Revolving Fund (CWSRF) program. The PER summarizes our evaluation performed and identifies strengths and opportunities for improvement in the CWSRF program. The review covered the period July 1, 2013 through June 30, 2014. EPA conducted its on-site review from May 19 to 20, 2015.

No action items for WV DEP or EPA were identified in the FY2014 review.

Purpose and Scope

The FY 2014 annual review of West Virginia's CWSRF program was conducted in accordance with EPA's Interim Final Annual Review Guidance and Region III's Annual Review Plan. The annual review process includes EPA's consideration of WV DEP's Annual Report, evaluation of the State's program, coverage of items in the Annual Review Checklist, completion of the Project File Review Checklists, and issuance of this PER.

The purpose of the annual review is to assess the State's management of the program, including:

- Performance in achieving goals and objectives identified in the Intended Use Plans (IUPs) and the Annual Report;
- Compliance with grant agreements, operating agreement, and regulations;
- Financial status and performance of the Fund; and
- Resolution of audit findings and prior year PER recommendations.



Environmental Benefits

During FY 2014, WV DEP executed 20 CWSRF loans totaling approximately \$89.4 million dollars. The majority of the funding continues to be used for actual construction while the remaining portion was used for planning, design, and administrative expenses related to the projects. West Virginia's CWSRF program provides financial assistance to improve and maintain water quality throughout the State. The projects financed are vital in protecting and improving water quality in rivers, lakes, and streams throughout the State used for drinking water, recreation, cold-water fisheries, warm water fisheries, wildlife use, industrial use, and agricultural use.

During FY 2014, the CWSRF program contributed to the joint State/EPA mission of achieving clean and safe water by using the following goals:

- Eliminate sewage overflows from combined sewer overflows (CSOs) and from separate sewer system overflows (SSOs);
- Improve and protect designated uses of water bodies; and
- Achieve and maintain Clean Water Act (CWA) compliance.

Of the \$89.4 million in loans closed during FY 2014, \$70.1 million went to helping systems achieve compliance with standards while \$16.1 million helped maintain compliance. The balance was for non-point source projects that do not address compliance. Additionally, \$74.2 million assisted communities with improving impaired water bodies and \$88.9 million address human health concerns.

Program Pace

The Loans to Funds Available (pace) indicator represents the percent of money available in the CWSRF program which has been committed in executed loans. In FY 2014 WV DEP attained a pace of 100%. WV DEP has identified a pipeline of projects to fund in the future which will ensure continued success in meeting the fund utilization goal rate.

Program Management

WV DEP continues to effectively manage the CWSRF program. For the effective management to continue, it is essential that the program be fully staffed with adequately trained employees. In addition, attendance at training courses continues to be included in the programmatic conditions to the capitalization grant. A minimum of two staff should attend the national Council of Infrastructure Financing Authorities (CIFA) conference, Regional All-States Meetings, Need Survey trainings and other SRF related training. These training opportunities are vital to WV DEP staying informed of the numerous changes and continuing developments in the national program.

Project Files Reviewed

EPA reviewed WV DEP's files for the following two projects:

- City of Martinsburg closed on 10/01/2013 for \$34,644,714.00.

- Greater Paw Paw PSD closed on 11/12/2013 for \$1,576,695.00.

The project files contained adequate and complete documentation. WV DEP conducts a full technical review and ensures the state environmental review process is completed. WV DEP performs a detailed financial capability review on all new loans and includes this documentation in the file. In addition, a WV DEP engineer or project manager periodically performs site visits during the construction phase of all projects. The project files include all inspection reports. WV DEP demonstrates continued overall sound management in its projects.

Compliance Requirements

EPA reviewed various documents provided by WV DEP to ensure compliance with all of the following requirements:

- Additional Subsidization
- Administrative Costs
- American Iron and Steel*
- Annual Report
- Binding Commitments
- Clean Water National Information Management System (CWNIMS)
- CWSRF Benefits Reporting (CBR) *
- Davis Bacon
- Federal Financial Accountability and Transparency Act
- Federal Financial Reports
- Fee Income
- Green Project Reserve
- Operating Agreement*
- Payment Schedules
- Readiness-to-Proceed*
- Signage*
- State Match
- Sustainability Policy

*Additional detail provided below

American Iron and Steel

The Consolidated Appropriations Act of 2014 followed by the Water Resources Reform and Development Act included the “American Iron and Steel” (AIS) requirement. AIS requires recipients of CWSRF assistance to use iron and steel products that are produced in the United States for the construction, alteration, maintenance or repair of a treatment works. In order to ensure recipient compliance WV DEP has done all of the following:

- Created and provided a pamphlet to all consultants explaining the AIS requirement and how it applies to construction projects;
- Created a contract certification template that must be included in all bid envelopes;

- Revised WV DEP's construction inspection checklist to include a question addressing AIS compliance; and
- Ensures recipients are maintaining all appropriate documentation related to AIS compliance during regular construction inspections.

CWSRF Benefits Reporting (CBR)

The Issue Report from the CBR database for loans executed during SFY 2014 included a total of 32 issues, none of which were appropriate. We reviewed each project record and discussed all of the issues on the report with WV DEP. All of the identified issues were correct as reported, and no changes were needed to CBR. The most commonly reported issue was the lack of a date in the "Initiation of Operations" data field. This field should remain blank until the project has completed construction and actually initiated operations.

During the detailed review of two project files, EPA compared the information entered into CBR with the information contained in the project files. All information reviewed was reported correctly in CBR.

Operating Agreement

The Operating Agreement was last amended in December, 2012. An amendment to this agreement may be needed to reflect changes in references to specific regulations as a result of the new OMB "Super Circular" that went into effect on December 26, 2014.

Readiness to Proceed

WV DEP considers projects ready to proceed when they can realistically proceed to construction within six months. At that time a formal commitment of CWSRF funding will be made. WV DEP will continue to commit funds to projects in order of their position on the priority list on a first-come, first-served basis, as long as all applicable program requirements have been met. At a minimum, the facilities plan must be approved, and the plans and specifications must be approvable. As projects are deemed eligible for a binding commitment, they will be funded in priority order. Prior to loan closing, the project must appear on the current year's priority list. EPA concludes that this implementation of readiness- to- proceed criteria effectively meets the need to ensure the timely and expeditious use of funds.

Signage

EPA and WV DEP discussed the new grant condition regarding signage at SRF projects which is expected beginning with the FFY2015 grant award. WV DEP explained their plans for ensuring compliance with this requirement. Mainly, WV DEP will include EPA's logo on all project signs in the future. WV DEP's proposed method is in accordance with the first implementation option outlined in the final SRF Signage Policy dated June 3, 2015.

Implementation of 2014 CWSRF Amendments

On June 10, 2014 the President signed the Water Resources Reform and Development Act (WRRDA) which included several amendments to the CWSRF program. The final Interpretive Guidance for Certain Amendments in the Water Resources Reform and

Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act was issued on January 6, 2015. WV DEP staff attended and participated in agency training on the new requirements in Chicago in July, 2014, Atlanta in September, 2014 and at CIFA in November, 2014.

During the annual review, EPA and WV DEP discussed WV DEP's plans for implementing these new amendments. EPA concurs that WV DEP has established all of the necessary processes and procedures for full compliance with these new requirements. Specifically,

- Affordability Criteria: WV DEP has completed establishing the affordability criteria which were included in their FY 2016 IUP. The IUP, including the new affordability criteria, underwent an appropriate public review and comment period. EPA has reviewed the IUP including the new affordability criteria and it has been approved.
- Administrative Costs: WV DEP plans to continue charging an annual administrative fee on all loans as a means of supporting the administrative costs of operating the CWSRF in perpetuity. These funds are maintained in a separate account outside of the CWSRF.
- Additional Subsidy: WV DEP plans to continue to provide additional subsidization in the form of principal forgiveness (PF) to hardship communities to implement projects they could not otherwise afford.
- A/E Contract Procurement- WV DEP provided an Attorney General certification that confirms WV DEP's procurement procedures conforms with and is an equivalent to 40 U.S.C. 1101.
- Cost and Effectiveness: This requirement is not applicable until October 1, 2015. WV DEP will review the final guidance and incorporate these requirements as part of its review of recipients' applications, and project plans, when required.
- Fiscal Sustainability Plans: WV DEP historically requires asset management plans of all loan recipients. Fiscal sustainability plans include a few minor additional items not already required for WV asset management plans. All applications for the FY 2015 funding cycle were received before October 1, 2014, therefore WV DEP will incorporate the few additional requirements into updated guidance documents for implementation during the FY 2016 funding cycle.

Sustainability, Resiliency, and Climate Change

EPA held a detailed discussion with WV DEP staff following the 14 page "SRF Sustainability Conversation Guide" dated August 13, 2014. Topics included asset management, planning, alternative analysis, rate structures, green infrastructure, decentralized wastewater systems, green space, energy efficiency, energy audits, renewable energy, water efficiency, water audits, water reuse, consolidations and partnerships, climate change, climate-related planning, climate resilience, security, emergencies, and recovering from extreme weather events. For each of these topics, the conversation involved the State's prioritization of these project types, State's history of funding these project types, and if there were any included on the State's most recent Project Priority List or Intended Use Plan.

WV DEP is currently funding many of the project types addressed in the Conversation Guide. All projects are reported in the CWSRF Benefits Reporting database as appropriate. WV DEP requires all loan recipients to implement an asset management program as a condition of funding. This requirement encourages loan recipients to do annual planning on facilities and finances. Achieving the most cost effective solution for SRF projects is a priority.

In addition, the discussion included a review of various tools available to the State and local recipients related to planning for future resiliency. EPA has documented this discussion and will update it in future annual reviews, as appropriate. EPA concluded that there were no recommendations or actions items needed to WV DEP's SRF program as a result of this discussion.

Cash Transactions Reviewed

For FY 2014, EPA headquarters* selected two WV DEP transactions as part of the national stratified sample (totaling \$519,370.00), and EPA Region III selected two additional transactions for review (totaling \$1,762,101.00). The four cash draws total \$2,281,471.00. All four draws were fully supported by subrecipient payment requests and/ or administrative invoices. All draws were for eligible CWSRF expenditures and were properly recorded in WV DEP's accounting records. No costs were questioned and there were no improper payments.

Cash Transaction Testing		
Grant Number	Date	Amount
*CS-540001-13	11/18/2013	\$446,344.00
*CS-540001-13	12/17/2013	\$73,026.00
CS-540001-13	02/03/2014	\$594,756.00
CS-540001-13	01/03/2014	\$1,167,345.00

Unliquidated Obligations (ULOs)

Nationally, EPA is concerned with the amount of undrawn grant funds because of the potential for rescission of unexpended funds or reduced appropriations in the next few years. WV DEP continues to follow EPA's first-in-first-out policy of drawing grant funds such that older grant funds are drawn first. As of our review in May, 2015, WV DEP has drawn 100% of all of its capitalization grants through the FFY 2014 grant resulting in a ULO balance of \$0.00.

Financial Health of the Fund

The financial health of the CWSRF program is good. All municipal loans are secured by system revenues and debt service reserves. Due to the absence of long-term debt, all funds deposited into the CWSRF are available to provide additional financial assistance to improve the State's water quality. To date there have been no municipal loan defaults, although some municipalities are delinquent with respect to deposits of loan reserves totaling \$146,192. That is an improvement, and a 47% reduction in delinquencies from FY 2013, where delinquencies totaled \$274,978. The West Virginia Water Development Authority (WV WDA) actively

monitors the delinquent communities on a monthly basis and when necessary, files a complaint with the Public Service Commission of West Virginia for resolution of the deficiencies.

Onsite septic repair projects are administered by the West Virginia Housing Development Fund (WV HDF) and Safe Housing and Economic Development (SHED), Inc. as fiscal intermediaries. Cumulatively there are 83 delinquent onsite loans as of June 30, 2014 totaling \$305,166, and three onsite loans totaling \$24,563 that are uncollectible. Prior to this, only five on-lot loan program loans have ever been written-off. WV DEP has worked closely with the WV HDF and SHED to develop consistent collection procedures to resolve delinquencies in the program. As of the date of our review, WV DEP has decided to use administrative fees to cover these loan defaults.

As of June 30, 2014, net assets were \$649,158,258. That is 3.27% over FY 2013 net assets of \$628,675,936. Included in this amount is \$270,686,602 in loan principal and interest repayments and \$26,583,443 in investment earnings.

Return on Equity (ROE) is a measure of the growth of capital within the CWSRF. The ROE for the CWSRF increased slightly to 0.54% in FY 2014, from 0.44% in FY 2013. The ROE rate is adequate considering WV DEP's CWSRF program generally offers loans to its borrowers with interest rates averaging less than one percent and interest rates on invested funds are near zero percent for the liquidity accounts.

WV DEP periodically performs long-term cash flow modeling and long-term planning of the CWSRF. It is very accurate in projecting the availability of cash flows to fund projects over the next several years.

EPA concludes that WV DEP continues to manage the CWSRF program in a manner that ensures the Fund will be available in perpetuity as a permanent source of financing of water quality infrastructure facilities. This conclusion is based upon a review of the audited financial statements, annual report, the financial management policies and procedures, and all of the following:

- The CWSRF fund account has a strong cash flow;
- Financial management is sound;
- Internal controls are in place;
- Annual independent audits are performed;
- All funds are invested prudently;
- The Infrastructure Council and Public Service Commission perform detailed initial credit analysis and financial capability assessments on all municipal borrowers;
- WV DEP provides strong loan monitoring of borrowers during construction and loan repayments throughout the loan periods;
- State match is deposited in one lump sum when EPA grants are awarded; and
- There is no debt.

Audits of the Fund

On March 31, 2015, the State's independent certified public accountants (CPAs) issued the West Virginia Comprehensive Annual Financial Report (CAFR) which included WV DEP CWSRF's audited financial statements. The CWSRF did not have its own independent audit separate from the CAFR because the Fund auditors lost their professional qualifications to

perform such audits. WV DEP did not learn of this issue until after the CWSRF audit was in process, preventing them from hiring a new independent auditor in a timely manner. Therefore WV DEP requested, and EPA approved WV DEP's proposal that the CWSRF be included in the CAFR for 2014 only. WVDEP will hire another CPA firm to perform the FY 2015 CWSRF financial audit.

The FY 2014 West Virginia State-wide Single Audit included one finding pertaining to the Federal Financial Accountability and Transparency Act (FFATA) reporting. The auditors stated that there was no indication of a formal review process for CWSRF Transparency Act reporting, and that policies and procedures relating to the reporting of first tier sub-awards as required by FFATA are not currently being followed. In addition, the auditors state that WVDEP management is not able to determine, in a timely manner, the existence of material non-compliance.

The Office of Infrastructure and Assistance (OIA) does not agree with this finding. In fact, EPA found that WVDEP is in compliance with its FFATA obligations during this Annual Review. The auditors found fault with WVDEP because it did not have a formal procedure to confirm that the sub-award data was entered timely by the responsible WVDEP staff.

While such a procedure is welcome, the tone and implications of this finding are inappropriate and imply that WVDEP does not take internal control over compliance with Federal requirements seriously. Even in the absence of a procedure to assure FFATA compliance, EPA monitors FFATA reporting of CWSRF grantees. Thus, any errors or omissions of required FFATA data would have been brought to WVDEP's attention and corrected.

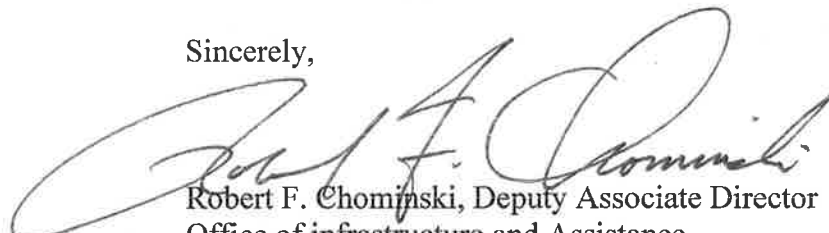
Furthermore, WVDEP's CWSRF was audited twice for FY 2014. Neither of those audits report any internal control substantial deficiencies or material weakness, much less any compliance findings or questioned costs. Weak internal controls lead to material misstatements of the financial statements whether due to error or fraud. There are no such findings in either audit report. OIA will provide a formal response to EPA Region III and the EPA Office of Inspector General (OIG) when the audit is issued to the Region for resolution.

Prior Year Action Items

2013 There were no action items for WV DEP as a result of the FY 2013 annual review.

Should you have any questions, please contact Kimberly Scharl at 215-814-5428 or me at 215-814-2162.

Sincerely,



Robert F. Chominski, Deputy Associate Director
Office of Infrastructure and Assistance